

## Officer History

**Officer Name:** Huynh, Philip

**Tax ID:** 963074

**Sex:** M

**Shield:** 21011

**Race:** Asian

**Rank:** POM

**Command:** 068

**DOB:** [REDACTED]

**Appt Date:** 01/04/2017

**Age:** [REDACTED]

**Tenure:** 4

CCRB #	Report Date	Incident Date	Allegation	Disposition	NYPD Disposition	NYPD Penalty	Command
201806858	05/25/2018	09/08/2017	Abuse - Refusal to obtain medical treatment	Unsubstantiated			068
201904529	05/24/2019	05/19/2019	Force - Nonlethal restraining device	Unsubstantiated			068
	05/24/2019	05/19/2019	Force - Nonlethal restraining device	Unsubstantiated			068
	05/24/2019	05/19/2019	Force - Nonlethal restraining device	Substantiated (Charges)			068
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]			[REDACTED]
Total Charges = 9				Total Cases = 3			

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Robert Bryan	Team: Squad #13	CCRB Case #: 201904529	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Sun, 05/19/2019 3:45 AM	Location of Incident: █████ 5th Avenue	Precinct: 68	18 Mo. SOL 11/19/2020	EO SOL 7/6/2021	
Date/Time CV Reported Fri, 05/24/2019 3:23 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Fri, 05/24/2019 3:23 PM		

Complainant/Victim	Type	Home Address
1. S█████ F█████	Comp/Victim	█████ 5th Avenue Brooklyn NY 11209
2. P█████ R█████	Victim	█████ 85th Street ██████ Brooklyn NY 11204
3. A█████ B█████	Victim	Unknown Unknown Unknown
4. Individuals	Victim	Unknown

Witness(es)	Home Address
1. A█████ G█████	Unknown Unknown Unknown
2. D█████ J█████	Unknown Unknown Unknown
3. S█████ Go█████	Unknown Unknown Unknown
4. Di█████ Unknown	Unknown Unknown Unknown

Subject Officer(s)	Shield	TaxID	Command
1. POM Mu█████ Ha█████	█████	█████	█████
2. POM Ha█████ Mu█████	█████	█████	█████
3. POM Philip Huynh	21011	963074	068 PCT
4. POM Jo█████ Po█████	█████	█████	█████
5. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Jo█████ Co█████	█████	█████	█████
2. POM He█████ Sa█████	█████	█████	█████
3. POF No█████ M█████	█████	█████	█████
4. POM Ju█████ Gu█████	█████	█████	█████
5. POM Eu█████ Ma█████	█████	█████	█████
6. POM Ri█████ S█████	█████	█████	█████
7. POM K█████ Du█████	█████	█████	█████
8. POM Ro█████ X█████	█████	█████	█████

Officer(s)	Allegation	Investigator Recommendation
A . POM Mu█████ Ha█████	Force: Police Officer Mu█████ Ha█████ used physical force against S█████ F█████	A . Exonerated
B . POM Mu█████ Ha█████	Force: Police Officer Mu█████ Ha█████ used physical force against A█████ B█████	B . Unfounded
C . An officer	Force: An officer used physical force against A█████ B█████	C . Unfounded
D . POM Philip Huynh	Force: Police Officer Philip Huynh used a taser against A█████ B█████	D . Exonerated

Officer(s)	Allegation	Investigator Recommendation
E . POM Philip Huynh	Force: Police Officer Philip Huynh used a taser against A [REDACTED] B [REDACTED]	E . Unsubstantiated
F . POM Philip Huynh	Discourtesy: Police Officer Philip Huynh spoke discourteously to A [REDACTED] B [REDACTED]	F . Exonerated
G . POM Philip Huynh	Force: Police Officer Philip Huynh used a taser against S [REDACTED] F [REDACTED]	G . Unsubstantiated
H . POM Philip Huynh	Force: Police Officer Philip Huynh used a taser against S [REDACTED] F [REDACTED]	H . Substantiated
I . POM Mu [REDACTED] Ha [REDACTED]	Force: Police Officer Mu [REDACTED] Ha [REDACTED] used a taser against S [REDACTED] F [REDACTED]	I . Unfounded
J . POM Philip Huynh	Discourtesy: Police Officer Philip Huynh spoke discourteously to individuals.	J . Exonerated
K . POM Jo [REDACTED] Po [REDACTED]	Force: Police Officer Jo [REDACTED] Po [REDACTED] used physical force against S [REDACTED] F [REDACTED]	K . Unsubstantiated
L . POM Jo [REDACTED] Po [REDACTED]	Force: Police Officer Jo [REDACTED] Po [REDACTED] used physical force against S [REDACTED] F [REDACTED]	L . Unsubstantiated
M . POM Ha [REDACTED] Mu [REDACTED]	Force: Police Officer Ha [REDACTED] Mu [REDACTED] used a taser against P [REDACTED] R [REDACTED]	M . Exonerated
N . POM Ha [REDACTED] Mu [REDACTED]	Force: Police Officer Ha [REDACTED] Mu [REDACTED] used a taser against P [REDACTED] R [REDACTED]	N . Unsubstantiated
O . POM Ha [REDACTED] Mu [REDACTED]	Force: Police Officer Ha [REDACTED] Mu [REDACTED] used a taser against P [REDACTED] R [REDACTED]	O . Unsubstantiated

### Case Summary

On May 24, 2019, S [REDACTED] F [REDACTED] filed this complaint in-person at the CCRB on behalf of himself and his friend, A [REDACTED] B [REDACTED] P [REDACTED] R [REDACTED] was subsequently identified as another victim.

At approximately 3:45 a.m. on May 19, 2019, a large group fight broke out inside Lonestar Sports Bar & Grill, located at [REDACTED] 5th Avenue in Brooklyn. The fight soon spilled out of the bar and onto the sidewalk. Mr. F [REDACTED] Mr. B [REDACTED] and Mr. R [REDACTED] were involved in the fight. Police Officer Mu [REDACTED] Ha [REDACTED] Police Officer Ha [REDACTED] Mu [REDACTED] and Police Officer Philip Huynh, all of the 68th Precinct, and several other officers arrived and attempted to break up the fight. PO Ha [REDACTED] used physical force against Mr. F [REDACTED] (**Allegation A – Force – Physical force; exonerated**). PO Ha [REDACTED] and an unidentified officer used physical force against Mr. B [REDACTED] (**Allegation B – Force – Physical force; unfounded; Allegation C – Force – Physical force; unfounded**). PO Huynh tased Mr. B [REDACTED] (**Allegation D – Force – Nonlethal restraining device; exonerated**) (**Allegation E – Force – Nonlethal restraining device; unsubstantiated**). PO Huynh spoke discourteously toward Mr. B [REDACTED] (**Allegation F – Discourtesy – Word; exonerated**). PO Huynh tased Mr. F [REDACTED] (**Allegation G – Force – Nonlethal restraining device; unsubstantiated; Allegation H – Force – Nonlethal restraining device; substantiated**). PO Ha [REDACTED] tased Mr. F [REDACTED] (**Allegation I – Force – Nonlethal restraining device; unfounded**). PO Huynh spoke discourteously toward unidentified individuals (**Allegation J – Discourtesy – Word; exonerated**). Police Officer Jo [REDACTED] Po [REDACTED] of the 68<sup>th</sup> Precinct used physical force against Mr. F [REDACTED] (**Allegations K and L – Force – Physical force; unsubstantiated**). PO Mu [REDACTED] tased Mr. R [REDACTED] three times (**Allegation M – Force – Nonlethal restraining device; exonerated**); **Allegations N and O – Force – Nonlethal restraining device; unsubstantiated**).

Mr. F [REDACTED] and Mr. R [REDACTED] were each arrested and charged with resisting arrest, obstructing governmental administration, and disorderly conduct. Mr. B [REDACTED] was arrested and charged with resisting arrest, obstructing governmental administration, disorderly conduct, and possession of a controlled substance. As of November 10, 2020, the Office of Court Administration (OCA) had no record of Mr. F [REDACTED] arrest (**Board Review 36**). Mr. R [REDACTED] and Mr. B [REDACTED] both pled guilty to disorderly conduct, for which they each paid \$95 fines (**Board Review 37**).

The body-worn-cameras of the following officers captured this incident: PO Ha [REDACTED] PO Mu [REDACTED] PO Huynh, PO Po [REDACTED] Police Officer Jo [REDACTED] Co [REDACTED] Police Officer B [REDACTED] L [REDACTED] Police Officer No [REDACTED] Mi [REDACTED] Police Officer Ju [REDACTED] Gu [REDACTED] Police Officer Eu [REDACTED] Ma [REDACTED] Police Officer Ri [REDACTED] S [REDACTED] Police Officer K [REDACTED] Du [REDACTED] Police Officer Ro [REDACTED] X [REDACTED] and Police Officer He [REDACTED] Sa [REDACTED] all of the 68<sup>th</sup> Precinct. The BWC footage is attached to IAs # 56-72 (**Board Review 01-19**) and summarized in IA # 189 (**Board Review 20**).

### Findings and Recommendations

**Allegation (A) Force: Police Officer Mu [REDACTED] Ha [REDACTED] used physical force against S [REDACTED] F [REDACTED]**

Mr. F [REDACTED] stated that he had been at the bar with friends since 9:00 p.m., during which time, he had consumed three alcoholic drinks (he could not remember what type). Mr. F [REDACTED] acknowledged being intoxicated during this incident. A fight broke out inside the bar and as Mr. F [REDACTED] exited the bar, he swung his arms to clear a path for himself through the fight. As soon as he exited the bar, PO Ha [REDACTED] grabbed him on his right shoulder, pulled him towards him, and turned him around. PO Ha [REDACTED] ordered Mr. F [REDACTED] to calm down and stay put, but Mr. F [REDACTED] approached the fight to try to pull his cousin's friend, D [REDACTED] (last name unknown), out of it. PO Ha [REDACTED] grabbed Mr. F [REDACTED] right shoulder and pulled him down to the ground, where Mr. F [REDACTED] landed in a seated position. Mr. F [REDACTED] stood up, ran past PO Ha [REDACTED] and again tried to pull D [REDACTED] from the fight, which by that point had spilled onto the sidewalk. As Mr. F [REDACTED]

sprinted towards Di [REDACTED] PO Ha [REDACTED] grabbed him by his sweatshirt and threw him to the ground, causing him to land lying on his back (**Board Review 21**).

PO Ha [REDACTED] stated that he and his partner, PO Huynh, responded to a call for backup regarding a bar fight, and when they arrived, he saw a crowd fighting outside the bar. Several minutes after arriving, PO Ha [REDACTED] saw Mr. F [REDACTED] walking towards the fight, so PO Ha [REDACTED] pushed him multiple times, he did not recall how many, and ordered him to “get back.” Mr. F [REDACTED] “tried to spin away” from PO Ha [REDACTED] and “get around” him. PO Ha [REDACTED] did not recall Mr. F [REDACTED] physically attacking any officers. Mr. F [REDACTED] said something about his family, turned around, and tried to get away from PO Ha [REDACTED] seemingly so he could join the fight. PO Huynh tased Mr. F [REDACTED] then PO Ha [REDACTED] threw Mr. F [REDACTED] onto the ground and handcuffed him (**Board Review 22**). [The investigation determined that PO Ha [REDACTED] misremembered the order of events. The physical force alleged here all took place prior to Mr. F [REDACTED] being tased. See Allegations G-H for an analysis of the Taser allegations.]

PO Huynh’s statement was somewhat consistent with PO Ha [REDACTED] statement. He said he saw Mr. F [REDACTED] attempt to join the fight and that “any reasonable person” would know not to cross the line of officers, which included PO Ha [REDACTED] standing between them and the fight. Mr. F [REDACTED] screamed in the direction of the fight, but PO Huynh could not recall what he said. Mr. F [REDACTED] walked towards the fight two or three times and each time, PO Ha [REDACTED] ordered him to “get back” and pushed him back. Mr. F [REDACTED] continued trying to get past PO Ha [REDACTED] and PO Ha [REDACTED] pushed Mr. F [REDACTED] to the ground (**Board Review 32**).

In PO Ha [REDACTED] first BWC video (**Board Review 02**), at the 01:05 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Ha [REDACTED] is positioned on the sidewalk in front of the bar. The fight is taking place behind him. Mr. F [REDACTED] a black male wearing a gray hooded sweatshirt, approaches PO Ha [REDACTED] and the group fight from the direction of the bar and says, “My cousin, my cousin.” At 01:07, an unclear interaction takes place between PO Ha [REDACTED] and Mr. F [REDACTED] and Mr. F [REDACTED] continues walking past PO Ha [REDACTED] in the direction of the fight. Due to the blurry and fast-moving video, the rest of PO Ha [REDACTED] interactions with Mr. F [REDACTED] are not clearly captured in the footage. [Although the video footage is blurry, if one pauses the video at the timestamps specified above and repeatedly presses the E key on the keyboard, the video will play frame-by-frame and allow the viewer to see the actions described above more clearly.]

NYPD Patrol Guide, Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of an officer or civilian and that the application of force must be reasonable under the circumstances (**Board Review 33**).

It is undisputed that Mr. F [REDACTED] approached a large group fight that was taking place outside of the bar while the officers were on scene, and that PO Ha [REDACTED] pushed Mr. F [REDACTED] multiple times and threw him to the ground. A preponderance of the evidence suggests Mr. F [REDACTED] ignored PO Ha [REDACTED] repeated orders to stay away from the fight and kept walking towards it. Though Mr. F [REDACTED] said the purpose of him approaching the fight was to remove someone involved, from PO Ha [REDACTED] perspective, it was reasonable for him to believe Mr. F [REDACTED] was trying to participate. Given this, the investigation determined that the physical force used by PO Ha [REDACTED] against Mr. F [REDACTED] was reasonable as it was used in an attempt to prevent further injuries to civilians and officers. It is therefore recommended that **Allegation A** be closed as **exonerated**.

**Allegation (B) Force: Police Officer Mu [REDACTED] Ha [REDACTED] used physical force against A [REDACTED] E [REDACTED]**

**Allegation (C) Force: An officer used physical force against A [REDACTED] E [REDACTED]**

**Allegation (D) Force: Police Officer Philip Huynh used a taser against A [REDACTED] B [REDACTED]**

**Allegation (E) Force: Police Officer Philip Huynh used a taser against A [REDACTED] B [REDACTED]**

Mr. F [REDACTED] said after PO Ha [REDACTED] pushed him to the ground, he stood up and saw PO Ha [REDACTED] push Mr. B [REDACTED] once into the group of people who were fighting. Mr. B [REDACTED] fell to the ground. Mr. F [REDACTED] did not see what Mr. B [REDACTED] was doing just before PO Ha [REDACTED] pushed him. Mr. B [REDACTED] stood up and started arguing with PO Ha [REDACTED]. Mr. F [REDACTED] also started arguing with PO Ha [REDACTED] saying, "What are you doing? He's with me. He's trying to help." Mr. F [REDACTED] was momentarily distracted, but when he looked back, either PO Ha [REDACTED] or PO Huynh, Mr. F [REDACTED] was not sure which, picked Mr. B [REDACTED] up from behind and "slammed" him into the ground, where he landed lying on his torso. Mr. B [REDACTED] tried to get up, and, while he was on all fours, PO Huynh tased him, so that the Taser prongs made contact with Mr. B [REDACTED] arm and the side of his torso. Mr. F [REDACTED] could not recall how long PO Huynh tased Mr. B [REDACTED] but said Mr. B [REDACTED] was screaming for about two minutes.

Mr. B [REDACTED] was unavailable to the investigation (see IAs for contact attempts).

In PO Co [REDACTED] BWC footage, at the 01:12 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Mu [REDACTED] and PO Sa [REDACTED] are seen standing face-to-face with Mr. B [REDACTED] a Hispanic man with long brown hair wearing a striped button-down shirt. Between 01:18 and 01:20, Mr. B [REDACTED] swings his right arm at PO Mu [REDACTED] face with a closed fist while holding a white shirt or jacket. PO Mu [REDACTED] tries to grab Mr. B [REDACTED] arm and Mr. B [REDACTED] raises his left arm toward PO Mu [REDACTED] right shoulder while holding onto the white shirt or jacket, which obscures the camera view so that it is unclear if Mr. B [REDACTED] makes contact with PO Mu [REDACTED] neck versus his shoulder. PO Huynh yells, "Taser! Taser!," then tases Mr. B [REDACTED] who falls to the ground on his back. PO Co [REDACTED] then tells PO Huynh to handcuff Mr. B [REDACTED] (**Board Review 01**).

In PO Huynh's BWC footage, at the 00:43-second mark of the media player timestamp (visible at the bottom of the screen), PO Huynh gets out of his car and runs to where the fight is taking place on the sidewalk just to the right of the bar. Several uniformed male officers can be seen just to the right of Mr. B [REDACTED] who is standing in the center of the screen at 00:48 with his back against the gate of a closed store to the right of the bar. At 00:48, the red light of a Taser can be seen on the right side of Mr. B [REDACTED] torso. Mr. B [REDACTED] is facing the sidewalk and his arms are folded over his midsection. PO Mu [REDACTED] PO Sa [REDACTED] and an unidentified officer surround Mr. B [REDACTED] whose back is against the gate of a storefront. PO Huynh yells, "Taser, taser!" There is a popping sound, though it is unclear how long the tasing lasts due to background noise, and at 00:50, two seconds later, PO Huynh tases Mr. B [REDACTED]. Mr. B [REDACTED] immediately begins falling to the ground. Sgt. Co [REDACTED] who is standing behind Mr. B [REDACTED] puts his arms under Mr. B [REDACTED] arms and lowers him to the ground without the use of force (**Board Review 03**).

PO Huynh stated that he saw PO Mu [REDACTED] and other officers attempting to grab Mr. B [REDACTED] arms, seemingly to arrest him. Mr. B [REDACTED] resisted by flailing his arms and he pushed one of the officers, identified via investigation as PO Mu [REDACTED] with both hands. Mr. B [REDACTED] grabbed PO Mu [REDACTED] very close to his neck. PO Huynh believed Mr. B [REDACTED] was about to choke PO Mu [REDACTED] so he tased Mr. B [REDACTED] from about five feet away with one five-second cycle of his Taser. PO Huynh did not give Mr. B [REDACTED] any verbal commands in an attempt to gain compliance because he believed the situation constituted an "exigent circumstance." The prongs entered Mr. B [REDACTED] right shoulder and the right side of his stomach and he fell to the ground. Once Mr. B [REDACTED] was on the ground, PO Huynh rear handcuffed him. PO Huynh recalled using one taser cycle on Mr. B [REDACTED].

PO Ha [REDACTED] stated that as he exited his vehicle, he saw PO Mu [REDACTED] and other officers already trying to calm Mr. B [REDACTED] down, but Mr. B [REDACTED] would not calm down, so PO Huynh tased him.

A TRI report prepared by PO Huynh and the 68<sup>th</sup> Precinct Command Log show that PO Huynh was assigned a Taser with serial number X130048H2 (**Board Review 27**). The X26 Taser Data Sheet associated with this Taser shows that one five second cycle was triggered at 4:02:03 a.m. and a four second cycle was triggered at 4:02:08 a.m. (**Board Review 34**).

NYPD Patrol Guide, Procedure 221-08 states that Tasers should only be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present. Active aggression includes a threat or overt act of an assault through physical or verbal means, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent (**Board Review 28**).

Contrary to Mr. F█████ statements that PO Ha█████ was pushed to the ground the first time and that either PO Ha█████ or PO Huynh slammed Mr. B█████ to the ground just before he was tased, PO Huynh's BWC footage shows that when he and PO Ha█████ arrived, Mr. B█████ was standing with his back against the front of a store surrounded by different officers, and that he remained there until PO Huynh tased him seconds later. Neither PO Ha█████ nor PO Huynh made physical contact with Mr. B█████ or had any interactions with him at the points in time where Mr. F█████ alleged that these pushes took place. Because the footage contradicts Mr. F█████ account, it is recommended that **Allegations B and C** be closed as **unfounded**.

PO Huynh's statement that Mr. B█████ put his hand near PO Mu█████ neck is corroborated by PO Co█████ BWC footage. Because Mr. B█████ violent behavior in the video amounts to active aggression against an officer, PO Huynh was justified in using a Taser to subdue him and prevent possible injury. It is therefore recommended that **Allegation D** be closed as **exonerated**.

However, PO Huynh believed he only used one taser cycle and therefore could not explain why a second one was necessary. Without additional evidence, including a statement from Mr. B█████ the investigation could not determine if the first cycle was ineffective and therefore, if the second cycle was necessary. It is therefore recommended that **Allegation E** be closed as **unsubstantiated**.

**Allegation (G) Force: Police Officer Philip Huynh used a taser against S█████ F█████.**

**Allegation (H) Force: Police Officer Philip Huynh used a taser against S█████ F█████.**

In PO Huynh's BWC footage, at the 02:40 minute-mark of the media player timestamp (visible at the bottom of the screen), PO Huynh points his Taser in the direction of Mr. F█████ but a man with an illustration of a skull on the back of his shirt stands between them with his back to PO Huynh (**Board Review 03**). PO Huynh yells "Get the fuck back" at this man (see Allegation J). The camera pans to the right so that Mr. F█████ is out of view before panning back to the left and down to where Mr. B█████ is lying on the sidewalk. At 02:45, Mr. F█████ is seen sitting on the ground several feet away with his hands in front of him. PO Huynh points his Taser at Mr. F█████ and yells, "Taser! Taser! Taser!" The sound of a Taser can be heard and the wire can be seen between PO Huynh's Taser and Mr. F█████ chest. Mr. F█████ says, "It's not doing nothing to me. I'm calm already." His hands remain visible throughout and he appears to gesture as he speaks. At 03:20, PO Huynh puts his Taser down and directs the officers nearby to handcuff Mr. F█████ while continuing to stand over Mr. B█████ who is lying on his stomach on the sidewalk.

Mr. F█████ stated that almost immediately after PO Huynh tased Mr. B█████ PO Huynh tased Mr. F█████ in the left side of his chest while Mr. F█████ was walking towards Mr. B█████ (**Board Review 21**). At this point, Mr. F█████ was about three to five feet from PO Huynh and about seven feet from Mr. B█████ who was behind PO Ha█████ and PO Huynh. The Taser prongs

went through his sweatshirt and into his chest, where they remained until he was taken to the hospital. After tasing Mr. F ██████ PO Huynh asked him, “Does it hurt?” Mr. F ██████ said, “What are you tasing me for? What the hell?”

PO Huynh stated that he initiated attempts to tase Mr. F ██████ while Mr. F ██████ was still standing and still attempting to walk past PO Ha ██████ to join the fight, but that each time he pointed his Taser at Mr. F ██████ other civilians got in between them so that PO Huynh did not have a clear shot. By the time PO Huynh did have a clear shot and squeezed the trigger, PO Ha ██████ was pushing Mr. F ██████ to the ground. Mr. F ██████ landed in a seated position and almost immediately after he did, one of the Taser prongs connected somewhere on Mr. F ██████ chest and the other seemed to get stuck in Mr. F ██████ sweatshirt near his stomach. PO Huynh denied that his intention was to tase Mr. F ██████ this first time while he was seated on the ground, but rather, the actions of Mr. F ██████ being pushed to the ground and being tased took place within a split-second of each other. Because Mr. F ██████ did not appear to be affected by the tasing, PO Huynh then used at least one additional cycle against him. PO Huynh believed this second cycle was necessary because Mr. F ██████ did not appear to have a physical reaction to the first shock and because he gave PO Huynh a look that seemed to say, “That’s it?” PO Huynh was worried that Mr. F ██████ might stand up again and keep fighting because he had not been incapacitated by the Taser.

The X26 Taser Data Sheet for PO Huynh’s Taser shows that he used two five second cycles against Mr. F ██████ one at 4:04:17 a.m. and one at 4:04:23 a.m.

NYPD Patrol Guide, Procedure 221-08 states that Tasers should only be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present. Active aggression includes a threat or overt act of an assault through physical or verbal means, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. Members should use a CEW for one standard cycle (five seconds) while constantly assessing the situation to determine if subsequent cycles are necessary. All applications must be independently justifiable, and the risks should be weighed against other force options

The investigation determined that at the time the Taser prongs first made contact with Mr. F ██████ he had just been pushed to the ground. However, PO Ha ██████ reported that a split-second prior, Mr. F ██████ had been attempting to aggressively push past PO Ha ██████ toward the group fight. Mr. F ██████ himself stated that PO Ha ██████ tased him as he was walking toward Mr. B ██████ and the BWC footage supports PO Ha ██████ statement that he had already initiated attempts to tase Mr. F ██████ but that civilians blocked his shot. Given PO Ha ██████ and Mr. F ██████ statements, as well as the BWC footage, the chaotic scene around them, and the close temporal space between which these actions occurred, the investigation could not determine if PO Ha ██████ intended to tase Mr. F ██████ while he was still standing, aggressively pushing past PO Ha ██████ and refusing to comply with lawful orders by approaching the group fight, or if his intention was to Taser Mr. F ██████ as he sat on the ground. It is therefore recommended that **Allegation G** be closed as **unsubstantiated**.

However, as per the Patrol Guide, Tasers should only be used against those exhibiting active aggression or to prevent further injury, and PO Huynh’s justification for tasing Mr. F ██████ the second time, his belief that Mr. F ██████ might get up and “keep fighting,” was an assumption unsupported by Mr. F ██████ body language and contradicted by the fact that no civilian or officer reported that Mr. F ██████ had been participating in the fight in the first place, only that he had walked toward those who were participating. The investigation determined that it was not reasonable for PO Huynh to believe that Mr. F ██████ posed an imminent threat to anyone at the



time he tased him the second time. It is therefore recommended that **Allegation H** be closed as **substantiated**.

**Allegation (I) Force: Police Officer Mr. [REDACTED] Ha [REDACTED] used a taser against S [REDACTED] F [REDACTED]**

Mr. F [REDACTED] stated that two to three minutes after PO Huynh tased Mr. F [REDACTED] PO Ha [REDACTED] saw that Mr. F [REDACTED] was not falling down, and he tased him in the right hip, causing Mr. F [REDACTED] to fall to the ground.

The TRI Report PO Ha [REDACTED] prepared for Mr. F [REDACTED] states that he did not use a Taser (Board Review 32), and during his CCRB interview, PO Ha [REDACTED] stated that he did not use a Taser at any point during the incident. PO Huynh stated in his interview that PO Ha [REDACTED] did not tase Mr. F [REDACTED]. None of the BWC footage from any officers captures PO Ha [REDACTED] using a taser against Mr. F [REDACTED] or anyone else, and the footage contradicts Mr. F [REDACTED] testimony because it shows that he was already on the ground at the time he was tased. Because PO Ha [REDACTED] did not use a taser against Mr. F [REDACTED] as alleged, it is recommended that **Allegation I** be closed as **unfounded**.

**Allegation (F) Discourtesy: Police Officer Philip Huynh spoke discourteously to A [REDACTED] E [REDACTED]**

**Allegation (J) Discourtesy: Police Officer Philip Huynh spoke discourteously to individuals.**

In PO Huynh's BWC footage, at the 01:00 minute-mark of the media player timestamp (visible at the bottom of the screen), as PO Huynh is attempting to handcuff Mr. B [REDACTED] he yells, "Give me your fucking arm!" At 02:20 he says, "Don't fucking move." At 02:35, he tells a group of bystanders, "Back the fuck up. Get off the sidewalk." At 02:40, he says to a man in a white hoodie, "Get the fuck back" (**Board Review 03**).

PO Huynh stated that his use of profanity during this incident was due to the "emergency situation" of the ongoing fight, and he believed the people walking past him were about to join the fight because they were running towards its direction. He was not sure if any of the civilians involved were attempting to intervene in the arrest of people involved in the fight.

NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." NYPD Disciplinary Case No. 2018-18951 (**Board Review 29**).

Because PO Huynh's use of discourteous language took place in the context of a stressful street encounter, and because he used the profanity in an effort to maintain control of a chaotic and violent situation, it is recommended that **Allegations F and J** be closed as **exonerated**.

**Allegation (K) Force: Police Officer Jo [REDACTED] Po [REDACTED] used physical force against S [REDACTED] F [REDACTED]**

**Allegation (L) Force: Police Officer Jo [REDACTED] Po [REDACTED] used physical force against S [REDACTED] F [REDACTED]**

Mr. F [REDACTED] stated that by the time the officers tased him, the group fight had already broken up. While Mr. F [REDACTED] was on the ground after being tased, an officer whom he could not see punched him in his head and back and kicked him in the back of his leg. Mr. F [REDACTED] acknowledged he was initially resisting by moving around as if he was trying to stretch his limbs, but he denied swinging his arms, kicking his legs, or pushing any officers.

PO Po [REDACTED] stated that he helped PO Ha [REDACTED] handcuff Mr. F [REDACTED] who was violently resisting arrest by flailing his arms and refusing to allow himself to be handcuffed. To overcome Mr. F [REDACTED] resistance, PO Po [REDACTED] used at least one "hand strike" against him. PO Po [REDACTED] did not

specify if this was with an open or closed hand. He did not recall how many strikes he used, how Mr. F█████ was positioned, or where the strike(s) landed on Mr. F█████ body, though he said they could have been in “the head area.” PO Po█████ did not kick Mr. F█████ and did not recall hitting him in his back (**Board Review 31**). In the TRI Report PO Po█████ prepared for Mr. F█████ he noted using a hand strike, though no further details of the interaction or the exact physical contact are described (**Board Review 27**).

PO Huynh denied seeing PO Po█████ or any other officer strike or kick Mr. F█████ and he denied striking or kicking him himself. PO Mu█████ did not recognize a photograph of Mr. F█████ and did not recall seeing him during this incident, so he could not speak to this allegation.

In PO Po█████ BWC footage, at the 00:47 minute-mark of the media player timestamp (visible at the bottom of the screen) (**Board Review 15**), PO Po█████ is seen assisting PO Ha█████ with handcuffing Mr. F█████ but the camera angle does not allow for a clear view of the officers’ limbs and no punches or kicks are captured.

Mr. F█████ alleged that an officer he could not see punched him in the head and back and kicked his leg. PO Po█████ acknowledged using at least one hand strike against Mr. F█████ but he did not recall where the hand strike(s) landed, and he denied kicking Mr. F█████. No other officer interviewed recalled seeing PO Po█████ use physical force against Mr. F█████. Due to the inconsistent civilian and officer statements regarding this aspect of the incident, as well as inconclusive BWC video evidence, the investigation was unable to determine whether the hand strike(s) PO Po█████ used against Mr. F█████ was/were justified, whether PO Po█████ kicked Mr. F█████ or whether the alleged kick would have been justified. It is therefore recommended that **Allegations K and L** be closed as **unsubstantiated**.

**Allegation (M) Force: Police Officer Ha█████ Mu█████ used a taser against P█████ R█████**

**Allegation (N) Force: Police Officer Ha█████ Mu█████ used a taser against P█████ R█████**

**Allegation (O) Force: Police Officer Ha█████ Mu█████ used a taser against P█████ R█████**

In PO Co█████ BWC footage, at the 02:58 minute-mark of the media player timestamp (visible at the bottom of the screen), Mr. R█████ dressed in a turquoise t-shirt, is seen in front of the closed store just south of the bar, engaging in a fist fight with several other civilians (**Board Review 01**). In PO Mi█████ BWC footage, at the 00:55 minute-mark of the media player timestamp (visible at the bottom of the screen), Mr. R█████ is seen participating in the fight. At 00:59, PO Mu█████ deploys the Taser and its arcing sound can be heard as the prong wires go towards Mr. R█████ who starts to fall backward and reaches with his left hand toward the left side of his abdomen. At 01:08, someone says, “Get him off. Get him off. Get off him!” At 01:12, Mr. R█████ back is to the camera and a voice offscreen says, “Get the fuck off me, man!” At 01:13, only Mr. R█████ back is visible, but he appears to have gotten up off of the sidewalk. At 01:17, someone says, “Let him go.” PO Mu█████ approaches Mr. R█████ and tases him from approximately a foot or two away, and the sound of the Taser is audible for about 10 seconds. At 01:25, Mr. R█████ falls to the ground as PO Mu█████ is reaching toward Mr. R█████ abdomen with the Taser (**Board Review 08**).

Mr. R█████ stated that he was kneeling on top of a man he did not know and punching him when he realized he was being tased because he heard the sound of the Taser and felt a burning sensation on the left side of his rib cage. He saw Taser prongs sticking out of his rib cage and turned around to see PO Mu█████ tasing him. PO Mu█████ continued to use the Taser twice more, each time lasting five to ten seconds. Initially, Mr. R█████ did not feel the Taser because of his adrenaline, but after a few seconds, he felt a shock. PO Mu█████ ordered Mr. R█████ to get on the ground. Mr. R█████ complied and laid face down. PO Mu█████ then handcuffed and arrested him (**Board Review 24**).

PO Mu [REDACTED] stated that he grabbed Mr. R [REDACTED] and tried to pull him away as he and another man were punching and kicking each other, but Mr. R [REDACTED] did not stop fighting the other man. PO Mu [REDACTED] tried to pull Mr. R [REDACTED] away a total of three times, but Mr. R [REDACTED] would not comply and continued fighting. PO Mu [REDACTED] tased Mr. R [REDACTED] from about eight feet away. Both prongs connected but one of them immediately fell out, and Mr. R [REDACTED] continued fighting because the Taser had no effect. PO Mu [REDACTED] tried to drive stun Mr. R [REDACTED] twice, but other civilians pushed Mr. R [REDACTED] out of the way both times before PO Mu [REDACTED] was able to have his Taser make contact with Mr. R [REDACTED]. On the final attempt, just after someone pushed Mr. R [REDACTED] for a third time, the Taser connected for about two seconds, Mr. R [REDACTED] body stiffened, and he fell. An officer whose name PO Mu [REDACTED] did not recall assisted him with placing Mr. R [REDACTED] in handcuffs (**Board Review 23**).

The investigation obtained an X26 Taser Data Sheet for PO Mu [REDACTED] which did not document any use of a Taser during this incident. However, given the civilian and officer statements and the video evidence of this aspect of the incident, the investigation determined that PO Mu [REDACTED] did use his Taser against Mr. R [REDACTED] but noted the wrong Taser number on the TRI Report he prepared regarding this incident. Sergeant Sa [REDACTED] De [REDACTED] of the IAB-CCRB Liaison's Unit confirmed that without the correct Taser serial number, IAB could not locate the correct X26 Taser Data Sheet, and therefore, the investigation was unable to obtain the correct document (**Board Review 35**).

NYPD Patrol Guide, Procedure 221-08 states that Tasers should only be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present. Active aggression includes a threat or overt act of an assault through physical or verbal means, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent. According to the Taser manufacturer's manual, a CEW's electrical current is "relatively quiet when both probes make direct contact with a human" (**Board Review 39**).

It is undisputed that Mr. R [REDACTED] was participating in a chaotic brawl and was punching someone when PO Mu [REDACTED] initially tased him. According to PO Mu [REDACTED] Mr. R [REDACTED] did not comply with his efforts to pull him away from the fight. The investigation determined that Mr. R [REDACTED] actions constituted active aggression and PO Mu [REDACTED] was therefore justified in using his Taser to prevent injury to others. It is therefore recommended that **Allegation M** be closed as **exonerated**.

Despite the absence of an X-26 Data Sheet, which would have showed precisely how many electric cycles were deployed by PO Mu [REDACTED] Taser, PO Mu [REDACTED] acknowledged attempting to use the Taser in drive stun mode against Mr. R [REDACTED] more than once. This is also corroborated by the loud audible arcing sound captured in PO Mu [REDACTED] BWC video. The Taser manufacturer's manual suggests that a loud arcing sound lasting 10 seconds would only occur if the Taser did not make contact with a human during those two cycles, which supports PO Mu [REDACTED] account that he tried to dry stun Mr. R [REDACTED] twice in rapid succession but missed. However, the BWC footage does not capture how many times PO Mu [REDACTED] made contact with Mr. R [REDACTED] with the Taser, what effect, if any, the Taser had on Mr. R [REDACTED] and whether Mr. R [REDACTED] was resisting or fighting when any of these alleged subsequent cycles were deployed. Given all of this, it is recommended that **Allegations N and O** be closed as **unsubstantiated**.

#### Civilian and Officer CCRB Histories

- [REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]

- [REDACTED]
- PO Huynh has been a member of service for three years and has been named as a subject in one prior CCRB complaint comprised of one allegation, which was not substantiated. PO Huynh's CCRB history does not reflect any pattern pertinent to this investigation.
- [REDACTED]

**Mediation, Civil and Criminal Histories**

- [REDACTED]
- As of May 18, 2020, no Notice of Claim has been filed with the NYC Comptroller's Office regarding this incident (**Board Review 30**).
- [REDACTED]
- [REDACTED]
- [REDACTED]

Squad 13

Investigator:	<u>Robert Bryan</u> Signature	<u>Robert Bryan</u> Print Title & Name	<u>12/31/20</u> Date
Squad Leader:	<u>IM Laura Kastner</u> Signature	<u>IM Laura Kastner</u> Print Title & Name	<u>12/31/2020</u> Date